

ORIGINAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

MAY 29 1985

In the Matter of:)
) CRT 84-1:83-CD
1983 Cable Copyright)
Royalty Distribution)

COMMENTS OF PBS
IN LIEU OF AN OBJECTION

The written direct testimony of David J. Stern submitted by the sports claimant group, at page one, makes reference to a contract between the National Basketball Association and Turner Broadcasting Systems, Inc. (WTBS). The sports claimant group has denied our request to produce a copy of this document.

As is stated in the direct case of public television (§26), in this proceeding we will seek to diminish the value of the claims of copyright owners of programs on WTBS on the basis that they have already negotiated and received full market value royalty payments based upon the WTBS distant signal carriage. Mr. Stern's direct written testimony makes reference to his negotiation of the NBA-Turner contract, then urges the Tribunal to evaluate the marketplace by focusing on the respective positions of sellers and buyers, and then proceeds to espouse a seller's viewpoint which is to the effect that the NBA teams should be heavily compensated by the Tribunal for the distant carriage of their programs, primarily by Turner's superstation WTBS. This opens the door to counter testimony and evidence, including evidence of the position of Turner as the buyer of

these programs on behalf of WTBS and, in effect, as a surrogate buyer of these programs on behalf of the cable systems that carry the WTBS distant signal.

Turner Broadcasting Systems, Inc. has recently petitioned the Tribunal to reduce the 3.75% rate as applied to WTBS distant signal carriage. That petition contains the following statement:

TBS' experiences under the CRT's decision have demonstrated that the post-deregulation 3.75% rate is not reasonable within the meaning of § 801(b) (2) (B) with respect to cable system carriage of WTBS. First, WTBS began to be distributed to cable systems by satellite in 1976. Substantially all contracts for programming into which WTBS had entered prior to 1976 have now expired. Contracts currently in effect were entered into between a willing buyer, TBS, and a willing seller. Each seller has been aware of WTBS's satellite distribution, and has contracted at free market prices voluntarily reached by the parties for exhibition of the programming. Second, these direct licensing fees paid by WTBS to copyright owners for renewal of rights or for purchase of initial rights have, in fact, increased to reflect the expanded audience WTBS now reaches nationally. Third, program suppliers, while voluntarily selling to WTBS, offer only these programs they view as suitable for exhibition by WTBS in its capacity as the "SuperStation"; hence, a "SuperStation" submarket of the current syndication market has been created with respect to WTBS....

We believe Mr. Stern's reference to the NBA-Turner contract in the context of his direct written testimony makes relevant the express terms and conditions of that contract. However, we are not asking the Tribunal to make an advance ruling "in a vacuum" at this time. As the presentation of proofs and cross examination of witnesses develop, the Tribunal will be in a position to consider this matter in the proper context. We are

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